IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, Plaintiff, VS. ENRON CORP., et al., Defendants.	CIVIL ACTION NO. H-01-3624 (Consolidated)

DEFENDANT KEVIN P. HANNON'S MOTION TO DISMISS

Defendant Kevin P. Hannon submits this brief in support of his Motion to Dismiss the Consolidated Complaint as to him.[1]

INTRODUCTION

If this Court dismisses this case as to anyone, it should be Kevin Hannon. As an afterthought six months after filing this class action, plaintiffs added Kevin Hannon to this case simply because he was an executive with Enron Broadband Services, Inc. ("EBS") from January 2000 until June 2001, and had earlier served in other executive jobs with Enron.

However, while adding Kevin Hannon to this case, plaintiffs' April 8th Consolidated Complaint fails to particularize what they think he did wrong. Indeed, the Complaint barely mentions him. While the complaint runs to 500 pages and over 1,000 paragraphs (and many subparagraphs), and follows six months of research, its particular references to Kevin Hannon are so few that they can be set forth in full text below:

[1]Mr. Hannon joins in and incorporates by reference the arguments set forth in the Certain Defendants' Joint Brief Relating to Enron Disclosures, and the Joint Brief of Officer Defendants.

... Enron's top executives and directors [included] ... Kevin P. Hannon .... (Compl. ¶1(a), repeated in ¶993(a))

Defendant Kevin P. Hannon ("Hannon") was, until his resignation in 8/01, Operating Officer [sic] of EBS. Hannon previously was Enron's president of trading and commodities business [sic]. Hannon was involved with, and made positive public statements about, Enron-Online [an Enron service not otherwise discussed]. Hannon also participated in the bandwidth trading by which Enron misstated its financial results. At Hannon's request, he was not considered an officer of Enron specifically so he could avoid reporting his stock sales. During the Class Period, while in possession of adverse undisclosed information about the Company, Hannon sold shares of his Enron stock for millions in illegal insider trading proceeds. Hannon did sell call options on Enron stock prior to 5/1/01 such that he would profit so long as Enron stock dropped below $70 per share by 1/19/02. (Compl. ¶83(t))

... During the Class Period, the Enron Defendants engaged in illegal insider trading .... The collective insider selling by the officers and directors of Enron before and during the Class Period is shown below: ... INSIDER: Hannon – SHARES SOLD: Unknown but substantial. – PROCEEDS: Unknown but substantial .... (Compl. ¶84)

... The Enron Defendants' roles on the Enron Management Committee during 97-01 are set forth below: ... Kevin P. Hannon – President and COO, ECT North America ['97-'98] ... Kevin P. Hannon – Chief Operating Officer, Enron Broadband Services ['99-'00] .... (Compl. ¶88)

The situation in EBS was so desperate by Spring 01 that there was a coup attempt by several managers who reported to CEO Rice and COO Hannon and wanted them moved out of EBS. The managing directors met with Skilling and informed him that EBS was in extremely dire straits – there was "no way to win," EBS "had no income," and the "cash-burn rate was too high." They showed Skilling actual EBS performance numbers. Rejecting their request, Skilling neither replaced Rice and Hannon nor did he make any changes, other than having the managing director also now report to him directly to keep him updated on the disaster in EBS .... (Compl. ¶300(j)(iii), repeated in ¶339(j)(iii))

The scienter of the Enron Defendants sued for fraud is further evidenced by the large amount of insider selling. The Enron insiders sold the following amounts of stock: ... INSIDER: Hannon – SHARES SOLD: Unknown but substantial. – PROCEEDS: Unknown but substantial .... (Compl. ¶401)

Under clear PSLRA principles laid out in this Court's opinion in In re Sec. Litig. BMC Software, Inc., 183 F. Supp.2d 860 (S.D. Tex. 2001), plaintiffs have not stated a claim for securities fraud against Kevin Hannon, and his motion to dismiss should be granted. Among these PSLRA principles, discussed in detail below, the following are particularly relevant here:

- A complaint is insufficient when it "conclusorily alleges that Defendants' scienter was based on their executive positions, their involvement in day-to-day management of [the company's] business, their access to internal corporate documents, conversations with corporate officers and employees, and their attendance at management and Board meetings. ... Plaintiffs must allege what actions each Defendant took in furtherance of the alleged scheme and specifically plead what he learned, when he learned it, and how Plaintiffs know what he learned." Id. at 885-86. This Court will reject a complaint that "generally attributes ... knowledge of the alleged fraud to [defendants'] high positions ... and their day-to-day involvement in the business or from unidentified internal corporate documents and conversations." Id. at 915-16.

- "[U]nder the traditional 'group pleading presumption,' a company's statements 'in prospectuses, registration statements, annual reports, press releases, or other group-published information' may be presumed to be the collective work of those individuals with direct involvement in the everyday business of the company. ... Because this Court believes a more stringent pleading is required by the PSLRA, it agrees with those district courts that find the group pleading doctrine is at odds with the PSLRA and has not survived the amendments." Id. at 902, n.45. "This Court has so held in three previous PSLRA securities fraud [cases]." Id. at 912, n.50 (citing In re Landry's Seafood Rest. Inc. Sec. Litig., 2000 U.S. Dist. LEXIS 7005, H-99-1948; Collmer v. U.S. Liquids, H-99-2785; Kurtzman v. Compaq Computer Corp., H-99-779).

- "A conclusory statement of insider trading is insufficient to give rise to a strong inference of scienter; Plaintiffs must delineate unusual trading at suspicious times and in suspicious amounts by corporate insiders, out of line with prior trading practices, for such conduct to be probative of scienter." Id. at 901. There must be "specific allegations of contemporaneous trading of Plaintiffs/investors and Defendants here, with alleged facts to support such a contention." Id. at 916. A complaint fails if it relies on a "generalized allegation of insider trading," with "no specific allegation of what nonpublic information was used by Defendants to trade and how they knew such information was material or nonpublic, other than the unacceptable assertion that they knew by virtue of their positions and day-to-day business activities." Id.

Kevin Hannon should not be kept as a defendant in this case simply because plaintiffs think they *might* have a claim against him based on his position as one of many officers of the company whose activities they are challenging. Where plaintiffs have failed to satisfy PSLRA pleading standards as to Kevin Hannon, he and his family should be spared the burden, expense and anxiety of two years or more in complex litigation.[2]

ARGUMENT

I. PLAINTIFFS FAIL TO STATE A CLAIM FOR VIOLATIONS OF SECTION 10(b) AND RULE 10b-5 AGAINST HANNON

A. Plaintiffs Must Meet a Heavy Burden to Plead a Securities Fraud Claim

To state a claim under Section 10(b) and Rule 10b-5, the plaintiffs must show: (1) a misstatement or an omission, (2) of material fact, (3) made in connection with the sale or purchase of a security, (4) with the intent to defraud (scienter), (5) on which the plaintiffs relied, and (6) which proximately caused injury to the plaintiffs. Williams v. WMX Tech., Inc., 112 F.3d 175, 177 (5th Cir. 1997); see also In re Sec. Litig. BMC Software, Inc., 183 F. Supp.2d 860, 866 n.15 (S.D. Tex. 2001). The failure to establish any one of these elements necessarily precludes a securities fraud claim.

Because Section 10(b) claims are fraud claims, plaintiffs' Complaint must also satisfy the strict pleading requirements set forth in Rule 9(b). See Tuchman v. DSC Communications Corp., 14 F.3d 1061, 1067-68 (5th Cir. 1994). Rule 9(b) requires that the circumstances of the alleged fraud by pled "with particularity." Fed. R. Civ. P. 9(b). Thus, in

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[2]Kevin Hannon is 41 years old. He lives in Houston with his spouse and three young boys. Since his departure from the Company in August of last year, Mr. Hannon has devoted himself full time to various charitable activities involving under-privileged youth, the homeless, and those recently finding themselves unemployed in the Houston community.

securities fraud actions, Rule 9(b) requires a plaintiff to, at a minimum, "'specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent.'" BMC Software, 183 F. Supp.2d at 866 n.14 (quoting Williams v. WMX Tech., Inc., 112 F.3d 175, 177 (5th Cir. 1997)).

In addition, plaintiffs' Complaint must meet the stringent pleading requirements of the Private Securities Litigation Reform Act ("PSLRA"). The PSLRA reinforces Rule 9(b)'s particularity requirement, and sets forth an even more stringent requirements for allegations based on information and belief:

> [T]he complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed.

15 U.S.C. § 78u-4(b)(1). Moreover, it raises the standard for pleading scienter and requires that the Complaint "with respect to each act or omission alleged . . . state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." 15 U.S.C. § 78u-4(b).

The purpose of these heightened pleading requirements is to "provide[] defendants with fair notice of the plaintiffs' claims, protect[] defendants from harm to their reputation and goodwill, reduce[] the number of strike suits, and prevent[] plaintiffs from filing baseless claims then attempting to discover unknown wrongs." Tuchman, 14 F.3d at 1067; In re Azurix Corp. Sec. Litig., __ F. Supp.2d __, 2002 WL 562819, at *11 (S.D. Tex. Mar. 21, 2002) (same); see also Melder v. Morris, 27 F.3d 1097, 1100 (5th Cir. 1994) ("The heightened pleading standard of Rule 9(b) serves an important screening function in securities fraud suits."). A

complaint which fails to plead fraud with particularity under Rule 9(b) or which fails to meet the requirements of the PSLRA must be dismissed. See BMC Software, 183 F. Supp.2d at 866 n.4 (noting that the Fifth Circuit treats dismissals for failure to plead fraud with particularity under Rule 9(b) or the PSLRA as dismissals for failure to state a claim under Fed. R. Civ. P. 12(b)(6)); 15 U.S.C. § 78u-4(b)(3)(A) (requiring dismissal if complaint does not meet PSLRA's pleading requirements).

Mr. Hannon is precisely the type of defendant whom the Rule 9(b) and PSLRA standards were designed to protect. Plaintiffs have alleged no facts, let alone particularized facts, that Mr. Hannon made any material misrepresentation or omission or acted with an intent to defraud. Accordingly, plaintiffs have failed to state a securities fraud claim against Mr. Hannon under Rule 9(b) and the PSLRA, and the claim against him should be dismissed.

B. Plaintiffs Do Not Allege that Hannon Made a False Statement or Actionable Omission

Plaintiffs' Section 10(b) and Rule 10b-5 claim against Mr. Hannon fails because plaintiffs have not alleged that Mr. Hannon made an actionable misstatement or omission. As set forth above, there are only a handful of references to Mr. Hannon in the entire 500 page Complaint, none of which, either individually or in the aggregate, comes close to satisfying the pleading requirements under Rule 9(b) and the PSLRA. Because plaintiffs cannot make specific and particularized allegations against Mr. Hannon, they attempt to lump Mr. Hannon together with thirty-seven other defendants through vague and unparticularized allegations about defendants as a group. Such group pleading is not permitted under the PSLRA, and is wholly

insufficient to sustain a cause of action against Mr. Hannon.

1. The Few Allegations Specifically Referencing Hannon Do Not Meet the Rule 9(b) or PSLRA Pleading Requirements

The Court should dismiss plaintiffs' Section 10(b) and Rule 10b-5 claim against Mr. Hannon for the simple reason that plaintiffs have not alleged with particularity that Mr. Hannon made an actionable misstatement or omission or otherwise committed fraud. The "specific" allegations in the Complaint directed towards Mr. Hannon are: (1) his position with Enron (Compl. ¶¶ 83(t), 88); (2) unspecified "positive public statements" allegedly made by him concerning Enron-Online (Compl. ¶ 83(t)); (3) his participation in "bandwith trading" (Compl. ¶¶ 83(t)); (4) alleged complaints by unnamed subordinates about him (Compl. ¶¶ 300(j)(iii), 339 (j)(iii)); and (5) unspecified transactions in Enron Stock (Compl. ¶¶ 83(t), 84, 401). None of these allegations, even under the most liberal construction of Rule 9(b) and the PSLRA, allege with particularity that Mr. Hannon made any misrepresentation or participated in any way in an alleged fraud.

First, plaintiffs do not allege that Mr. Hannon made any misrepresentation or omission. The *only* statements arguably attributable to him in the entire Complaint, is an allegation that Mr. Hannon made unspecified positive public statements regarding Enron-Online. See Compl. ¶ 83(t) ("Hannon . . . . made positive public statements about, Enron-Online."). This allegation does not even begin to meet the requirements of Rule 9(b) and the PSLRA: Plaintiffs do not specify what Mr. Hannon said, when Mr. Hannon said it, to whom Mr. Hannon said it, or explain how the statement was fraudulent. See Nathenson v. Zonagen Inc., 267 F.3d 400, 419 (5th Cir. 2001) (finding allegations regarding clinical trials were insufficient under Rule 9(b) and

PSLRA because they "suffer from lack of required specificity, either in pin-pointing the particular misleading statement (other than general statements that the Phase II results were 'positive') or identifying with any degree of detail how those shortcomings impacted the trials. Moreover, it is well-established that generalized positive statements about a company's progress are not a basis for liability."); Williams, 112 F.3d at 178-80 (noting that courts "apply [Rule 9(b)] with force, without apology" and dismissing claim based on innocuous and unspecified statements which did not lay out the who, what, when, where and how). Because plaintiffs have not identified with specificity a fraudulent statement or omission by Mr. Hannon, the claim against him must be dismissed.[3]

Second, Mr. Hannon cannot be liable under Section 10(b) and Rule 10b-5 simply because he was an officer or participated in bandwith trading.[4] See Coates v. Heartland Wireless Communications, Inc., 26 F. Supp.2d 910, 916 (N.D. Tex. 1998) ("Plaintiffs must properly plead wrongdoing . . . as to each individual defendant and cannot merely rely on the individuals' positions or committee memberships with the [company]."). Plaintiffs are required to allege what action Mr. Hannon took in furtherance of the alleged fraud, and "specifically plead what he learned, when he learned it, and how Plaintiffs know what he learned." See BMC Software, 183 F. Supp.2d at 886 (dismissing complaint which failed to allege "with any particularity" that

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[3]See Eizenga v. Stewart Enter., Inc., 124 F. Supp.2d 967, 981 (E.D. La. 2000) ("The failure to identify specific statements made by a defendant is fatal to the action because it deprives the defendants of notice.").

[4]In addition, the allegations concerning complaints by unidentified subordinates of Mr. Hannon to Mr. Skilling are nothing more than anecdotal. They do no form the basis for any claim of securities fraud; indeed, there is no allegation of any sort of legal wrongdoing, let alone specific allegations of wrongdoing.

defendants "made any representations or participated in any way in the alleged scheme to defraud"); Lemmer v. Nu-Kote Holding, Inc., 2001 U.S. Dist. LEXIS 13978, at *24 (N.D. Tex. Sept. 6, 2001) (finding requirements of Rule 9(b) and PSLRA not met where plaintiff "makes no allegations of acts specifically attributed to Defendants . . . . [Plaintiff's] only allegations as to the scheme to defraud are vague, general and unsupported by specific details that might support a strong inference of such a scheme"); Thornton v. Micrografx, Inc., 878 F. Supp. 931, 938 (N.D. Tex. 1995) ("Plaintiffs have failed to identify a single allegedly misleading statement made by Gaal, or any other fraudulent activity which may be attributable to him. This fails to satisfy the particularity requirements of Rule 9(b) with respect Gaal. Where multiple defendants must respond to allegations of fraud, the complaint should inform each defendant of the nature of his alleged participation in the fraud."). Plaintiffs general statements that Mr. Hannon was an officer and participated in bandwith trading[5] certainly do not meet Rule 9(b)'s and the PSLRA's specificity requirements. Because plaintiffs have not pled with particularity facts demonstrating that Mr. Hannon engaged in any fraudulent conduct, plaintiffs' claim against Mr. Hannon should be dismissed.[6]

2. Hannon Is Not Liable for Group Published Information Under the PSLRA or Rule 9(b)

Because plaintiffs cannot make any specific and particularized allegations of fraud

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[5]Plaintiffs state that Mr. Hannon participated "in the bandwith trading by which Enron misstated its financial results." Not only does this claim fail for lack of specificity under Rule 9(b) and the PSLRA, it fails under the Court's ruling in Central Bank v. First Interstate Bank, 511 U.S. 164 (1994) which prohibits claims for aiding and abetting.

[6]For the reasons set forth infra, at II, plaintiffs unspecified allegations of insider trading are also insufficient to state a cause of action against Mr. Hannon.

against Mr. Hannon, plaintiffs admittedly are left to rely on the defunct group pleading doctrine. See Compl. ¶¶ 89-90 (stating that "[i]t is appropriate to treat the Enron Defendants as a group for pleading purposes" and to "presume" that "the press releases, reports to shareholders, SEC filings and the like are 'group published' materials of the Enron Defendants"). Plaintiffs, however, cannot rely on such unspecific allegations to meet the PSLRA's or Rule 9(b)'s pleading requirements and state a claim against Mr. Hannon.

First, this Court in BMC Software, and other courts in this Circuit and elsewhere have held that Congress abolished the group pleading technique when it enacted the PSLRA and heightened the pleading requirements. See, e.g., BMC Software, 183 F. Supp.2d at 912 n.50 (citing cases and stating "[b]ecause this Court believes a more stringent pleading is required by the PSLRA, it agrees with those district courts that find the group pleading doctrine is at odds with the PSLRA and has not survived the amendments. This Court has so held in three previous PSLRA securities fraud [cases].").[7] Rather, to comply with the PSLRA, plaintiffs must plead fraud with particularity with respect to *each* defendant, thereby informing *each* defendant of the nature of his or her alleged participation in the fraud. See Schiller v. Physicians Resource Group,

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[7]See also P. Schoenfeld Asset Mgmt. L.L.C. v. Cendant Corp., 142 F. Supp.2d 589, 620 (D.N.J. 2001) (agreeing with "other district courts' refusal to recognize the group published information doctrine after the passage of the PSLRA"); Zishka v. American Pad & Paper Co., 2000 U.S. Dist. LEXIS 13300, at *6 (N.D. Tex. Sept. 13, 2000) ("[T]his Court rejects the notion of 'group pleading,' and 'group publication' and concludes that such concepts, if previously sustainable, did not survive the adoption of the PSLRA."); Marra v. Tel-Save Holdings, Inc., 1999 WL 317103, at *5 (E.D. Pa. May 18, 1999) (finding group pleading inconsistent with PSLRA's purpose and dismissing complaint where plaintiffs "have failed to plead with particularity the allegation against each of the individual defendants"); Coates, 26 F. Supp. 2d at 915-16 (holding that "PSLRA codifies a ban against group pleading"); Allison v. Brooktree Corp., 999 F. Supp. 1342, 1350 (S.D. Cal. 1998) (finding that group pleading could not be "reconciled with the statutory mandate that plaintiffs must plead specific facts as to each act or omission by the defendant").

Inc., 2002 U.S. Dist LEXIS, at *19 (N.D. Tex. Feb. 26, 2002) ("[T]he PSLRA requires plaintiffs to 'distinguish among those they sue and enlighten *each defendant* as to his or her particular part in the alleged fraud.'").

Plaintiffs have not done so in this case. Here, the Complaint contains hundreds of generic references to defendants and management. These vague group pleading averments not only fail to plead the circumstances of the alleged misleading statements and falsity of those statements with particularity, they contain no specific references to Mr. Hannon, let alone attribute any statements or fraudulent conduct to Mr. Hannon. These generalized allegations are therefore insufficient under the PSLRA to state a claim against Mr. Hannon. See BMC Software, 183 F. Supp.2d at 123 (rejecting group pleading theory and holding that defendants who made no misstatements cannot be held liable under Section 10(b))).[8]

Second, even if the Court were to apply the group pleading doctrine, plaintiffs claim against Mr. Hannon still fails. Even before the PSLRA, merely pleading the individual defendant's position, or membership on a management committee -- all that plaintiffs alleged here with respect to Mr. Hannon -- was insufficient to invoke the group pleading doctrine. See

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[8]See also Schiller, 2002 U.S. Dist LEXIS 3240, at *20 ("Plaintiffs fail to identify any statement or omission attributable specifically to either D'Amico or Owen, and the thirty-one references to Bingham, none contains any statements attributable to him apart from a group of individuals. The PSLRA and Rule 9(b) require Plaintiffs to identify the particular individual who made the misstatement or omission. Plaintiffs cannot avoid the bar on group pleading by simply identifying the constituents of a group of defendants in rote an conclusory fashion."); Lemmer, 2001 U.S. Dist. LEXIS 13978, at **26-28 (dismissing claims against individual defendants where there are no alleged representations specifically attributable to them); Zishka, 2000 U.S. Dist. LEXIS 13300, at *6 ("To comply with the PSLRA, Plaintiffs thus must plead with particularity their allegations against each individual Defendant. The Court finds the complaint at issue here generally deficient for its failure to delineate specifically what each defendant knew and what each defendant said.").

In re Glenfed, Inc. Sec. Litig., 60 F.3d 591, 593 (9th Cir. 1995) ("Merely because the complaint identifies a corporation's outside directors, various committee assignments, and generic responsibilities for every committee does not mean the presumption of 'group published information' is applicable."); Strassman v. Fresh Choice, Inc., 1995 WL 743728, at *14 (N.D. Cal. Dec. 7, 1995) ("The fact that an individual defendant is an officer of the corporation, even if he or she is involved in the day-to-day management of the company, is not enough to invoke the group pleading doctrine. Instead, plaintiffs must allege that the officer must have some functional relationship with the alleged fraudulent activity.").[9] Instead, plaintiffs need to plead that Mr. Hannon had day-to-day involvement in the corporate activities of Enron and that he participated in the preparation or communication of the allegedly misleading group information, so that it would not be unreasonable to attribute the company's allegedly fraudulent statements to him. See Glenfed, 60 F.3d at 593; In re Oak Tech. Sec. Litig., 1997 WL 448168, at *11 (N.D. Cal. Aug. 1, 1997) ("To establish the liability of the vice president Defendants under the group pleading exception, Plaintiffs must satisfy a necessarily stricter requirement. Since all of the

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[9]As this Court summarized in BMC Software, the group pleading doctrine allowed plaintiffs to rely on a presumption that statements in prospectuses, registration statements, annual reports, press releases, or other group-published information are the collective works of "those individuals with direct involvement in the everyday business of the company." 183 F. Supp.2d at 912 n.50; see also Glenfed, 60 F.3d at 593 (noting that the group published doctrine was initially applied to "'a narrowly defined group of officers" who had involvement in not only the day-to-day affairs of the company in general but also in the financial statements in particular); In re NetSolve, Inc. Sec. Litig., 185 F. Supp.2d 684, 698 (W.D. Tex. 2001) (noting that the group pleading doctrine provided that "*high level* corporate officers may be responsible for statements issued by their company to the public") (emphasis added). Notwithstanding that the group pleading doctrine was not designed to hold thirty-eight individuals, who all had different positions and responsibilities within the company, liable for corporate statements, plaintiffs have set forth no facts by which the court could infer that Mr. Hannon, in his position as "Operating Officer of EBS," was directly involved with the everyday business of Enron Corporation as a whole.

inside officers in a corporation, by virtue of their positions, are involved in daily corporate activities, merely pleading as much is not sufficient to establish their liability under the group pleading exception. To establish the liability of these Defendants for Oak's allegedly misleading statements, Plaintiffs must plead that these vice presidents were directly involved 'not only in the day-today affairs of [Oak] in general but also in [the preparation of its] financial statements in particular.'"). Where, as here, plaintiffs have not alleged that Mr Hannon contributed in any manner to the allegedly misleading statements of Enron, or participated in any conference calls or press releases, the group pleading doctrine does not apply.[10] See NetSolve, Inc. Sec. Litig., 185 F. Supp.2d 684, 688-89 (W.D. Tex. 2001) ("Even the courts accepting group pleading after the PSLRA have commented that '[o]bviously Plaintiffs' recovery, if any, against a particular defendant will be limited to those misrepresentations to which Plaintiffs can prove that defendant contributed.'. . . . Here, the plaintiffs have not alleged that defendant Pojman contributed in any manner to the allegedly misleading statements. . . . Pojman is sued solely because he was the Vice President of Operations at NetSolve, and because he allegedly sold some 10,600 shares of

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[10]Moreover, although the Court of Appeals for the Fifth Circuit has not addressed the permissibility of group pleading since the enactment of the PSLRA, prior to its enactment, courts in the Fifth Circuit have held that general allegations that did not state with particularity what representations each defendant made, failed to meet the particularity requirement of Rule 9(b). See Coates, 26 F. Supp.2d at 915 (citing Tuchman v. DSC Communications Corp., 818 F. Supp. 971, 977 (N.D. Tex. 1993), aff'd, 14 F.3d 1061 (5th Cir. 1994); Unimobil 84, Inc. v. Spurney, 797 F.2d 214, 217 (5th Cir. 1986)); see also Branca v. Paymentech, Inc., 2000 U.S. Dist. LEXIS 1704, at *26 (N.D. Tex. Feb. 8, 2000) (holding that PSLRA bars the use of group pleading, and that plaintiffs' "prolific use of the terms 'defendants' and 'Paymentech and the Individual Defendants' does not sufficiently plead fraud with particularity as required by Rule 9(b) and applicable Fifth Circuit case law."); Thompson v. Avondale Indus., 2000 WL 310382, at *1 (E.D. La. Mar. 24, 2000) ("Although the Fifth Circuit has not addressed the permissibility or impermissibility of group pleading since the enactment of the PSLRA, this court concludes that the Fifth circuit is unlikely to approve of group pleading, a less stringent pleading requirement than those it endorsed formerly.").

his stock during the class period . . . . That is not enough to keep him in this lawsuit."); In re Sunterra Corp. Sec. Litig., 2002 WL 480620, at ** 13-14 (M.D. Fla. 2002) (finding that even under group pleading doctrine, "second-tier" officers were not liable because plaintiffs failed to allege a misstatement or omission attributable to them; "These Defendants [who held positions of Vice-President -- Finance, Senior Vice-President - Owner Services, Chief Reporting Officer, and Senior Vice President - Central Services] are not alleged to have signed the allegedly fraudulent SEC filings, to have been in positions of control over the content of the filings, or to have been involved in the day-to-day management of Sunterra").

Accordingly, group pleading is insufficient to meet the pleading requirements and state a claim against Mr. Hannon.

C. Plaintiffs' Allegations as to Hannon Do Not Support a "Strong Inference" of Scienter Required by the PSLRA

In addition to having failed to plead an actionable misstatement or omission, plaintiffs' Section 10(b) claim against Mr. Hannon must be dismissed for the additional independent reason that plaintiffs fail to plead facts sufficient to allow a "strong inference" of fraudulent intent, or scienter.

The PSLRA specifically raised the standard for pleading scienter and requires that as to *each* defendant, and with respect to "*each* at or omission alleged," the plaintiffs "state *with particularity* facts giving rise to a *strong inference* that the defendant acted with the required state of mind." See 15 U.S.C. § 78u-4(b)(2) (emphasis added).[11] To meet this standard,

[11]See also Nathenson, 267 F.3d at 407 (holding that to survive motion to dismiss, plaintiff "must now plead specific facts giving rise to a 'strong inference' of scienter"); BMC Software, 183 F.Supp.2d at 900 ("[U]nder the PSLRA, a court must examine the particular facts of each individual case to see whether they support a strong inference of scienter or reckless and knowing conduct, not

plaintiffs must plead particularized facts giving rise to a strong inference of severe recklessness or conscious misconduct.[12] Nathenson, 267 F.3d at 410-412. As the Court recently stated in Nathenson, pleading motive and opportunity alone is rarely sufficient to meet the pleading requirement for scienter. Id. at 412. Instead, "[w]hat must be alleged is not motive and opportunity as such but particularized facts giving rise to a strong inference of scienter." Id. In no event will conclusory allegations of state of mind suffice to meet the strong inference standard. Id. at 419-20; see also Schiller, 2002 U.S. Dist. LEXIS 3240, at *22 ("A plaintiff may not rely on boilerplate or conclusory allegations to satisfy its pleading obligations.").

Here, plaintiffs' scienter allegations are insufficient against Mr. Hannon because they fail to plead *any* facts related to Mr. Hannon's knowledge, when that knowledge was obtained, and how or why Mr. Hannon knew any particular statement was false or misleading at the time the statement was made. Instead, plaintiffs impermissibly offer conclusory allegations of knowledge based entirely on group pleading (Compl. ¶ 395-400), Mr. Hannon's position in the company (Compl. ¶¶ 83(t), 88), and Mr. Hannon's unknown stock sales (Compl. ¶ 401). These allegations are precisely the type that this Court has found inadequate under the PSLRA.

First, contrary to the PSLRA's mandate, the Complaint wholly fails to plead scienter with respect to Mr. Hannon individually. See Coates, 26 F. Supp.2d at 916 (stating that PSLRA is "fairly interpreted to require that a plaintiff allege facts regarding scienter as to each defendant"). Instead, the Complaint makes conclusory allegations regarding the thirty-eight

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merely a reasonable inference, to survive a [motion to] dismiss.").

[12]Severe recklessness is "a slightly less species of intentional misconduct" and "involve[s] not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care." Nathenson, 267 F.3d at 408.

Enron defendants' collective state of mind. (Compl. ¶ 395-400). In such situations, courts have not hesitated to find that plaintiffs failed to meet the scienter pleading requirement. See, e.g., BMC Software, 183 F. Supp.2d at 902 n.45 (rejecting group pleading doctrine and dismissing complaint); Schiller, 2002 U.S. Dist. LEXIS, at *36 n.10 (finding allegations regarding scienter of individual defendants as a group would not suffice to support a strong inference of fraud).

Second, as this Court recently affirmed in BMC Software, "[m]ere conclusory allegations that the defendants, because of their membership and/or their executive and managerial positions with the defendant company, knew or had access to information that was adverse and nonpublic do not plead scienter adequately." 183 F. Supp.2d at 900 (citing Melder v. Morris, 27 F.3d 1097, 1103 (5th Cir. 1994)). Plaintiffs are required to plead with particularity "scienter as to each individual defendant" and in doing so "cannot merely rely on the individuals' positions on committee memberships within the [company]." Coates, 26 F. Supp.2d at 916; see also BMC Software, 183 F. Supp.2d at 885-87. Plaintiffs have not done so here. Here, the few allegations specifically referencing Mr. Hannon set forth his position as "Operating Officer of EBS" and membership on the management committee. Plaintiffs set forth *no* facts regarding what information Mr. Hannon learned in these positions, how he learned of the information, or when he learned of the information. What little is pled, is simply not enough.[13]

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[13]See Collmer v. U.S. Liquids, Inc., 2001 U.S. Dist. LEXIS 23518, at *97 (S.D. Tex. Jan. 23, 2001) (rejecting plaintiffs' argument that "facts critical to a business's core operations . . . may be attributed to the company and its key officers"; "[T]he purpose of the PSLRA's particularized pleading requirements leads this Court to find that such an imputation, without some additional facts such as exposure to content-identified internal corporate documents (and who drafted them, who received them or how plaintiffs learned of them) or specific conversations or attendance at specified management or board meetings dealing with such problems, is inadequate to plead scienter."); In re Baker Hughes Sec. Litig., 136 F. Supp.2d 630, 648 (S.D. Tex. 2001) (finding scienter allegations inadequate where plaintiffs simply pleaded that defendants were officers who were responsible for

Third, besides Mr. Hannon's position in the company, plaintiffs' scienter allegations rely entirely on his "unknown" stock sales. (Compl. ¶ 401) Notwithstanding the Court's admonishment that facts suggesting motive and opportunity are nearly always insufficient by themselves, BMC Software, 183 F Supp.2d at 901, Mr. Hannon's unknown stock sales do not give rise to an inference (let alone a strong inference) of reckless or knowing conduct. As this Court stated, "'mere pleading of insider trading, without regard to context or strength of inferences to be drawn, is not enough.'"[14] Id. at 900 (quoting Greebel v. FTP Software, Inc., 194 F.3d 185, 198 (1st Cir. 1999)). "A conclusory statement of insider trading is insufficient to give rise to a strong inference of scienter; Plaintiffs must delineate unusual trading at suspicious times and in suspicious amounts by corporate insiders, out of line with prior trading

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the company's day-to-day activities and privy to information reflecting the truth about the company's finances through daily, weekly, and monthly financial reports; "Plaintiffs must identify those reports. . . . and specify the contents of the alleged reports' information, and how or why the Defendants were reckless or consciously misbehaved with respect to this information"); Lemmer, 2001 U.S. Dist. LEXIS 13978, at *39 ("As to conscious and reckless behavior, Lemmer points to the allegation that Defendants 'were Nu-kote's top officers and directors whose functions required them to be informed about the Company's business condition and its financial results,' . . . . and allegations that Defendants knew the representations and financial statements were false when they were issued . . . . This type of conclusory allegation 'fails to provide the specific facts upon which an inference of conscious behavior may be based.'") (quoting Melder v. Morris, 27 F.3d 1097, 1102 (5th Cir. 1994))); Branca v. Paymentech, Inc., 2000 U.S. Dist. LEXIS, at *36 ("Allegations that a party knew or should have known that false representations were being made merely by virtue of his position within a company are, as a matter of law, insufficient to plead scienter."); see also In re Advanta Corp. Sec. Litig., 180 F.3d 525, 538 (3d Cir. 1999) (dismissing as insufficient "conclusory assertions that the defendants acted 'knowingly,'" as well as "blanket statements that defendants must have been aware of impending losses by virtue of their positions within the company").

[14]See also Advanta, 180 F.3d at 540 (stating that it "will not infer fraudulent intent from the mere fact that some officers sold stock"); In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997) ("A large number of today's corporate executives are compensated in terms of stock and stock options. It follows then that these individuals will trade these securities in the normal course of events.").

practices, for such conduct to be probative of scienter." Id. at 901; see also Nathenson, 267 F.3d at 420-21 ("'Insider trading must be 'unusual' to have meaningful probative value.'"). Here, plaintiffs set forth no facts about Mr. Hannon's alleged trades other than to state that they are "unknown but substantial." (Compl. ¶ 401). Plaintiffs do not set forth the amount or percentage of the shares allegedly sold by Mr. Hannon, the timing of the sales, or whether they sales were consistent with his prior trading history. A strong inference cannot be drawn from what is unknown and unpled.[15]

Because plaintiffs have failed to plead with particularity facts giving rise to a strong inference that Mr. Hannon acted with fraudulent intent, the Section 10(b) and Rule 10b-5 claim against him should be dismissed.

II. PLAINTIFFS FAIL TO STATE A CLAIM AGAINST HANNON FOR INSIDER TRADING IN VIOLATION OF SECTION 20A

In their Second Claim for Relief, plaintiffs seemingly purport to assert an insider trading claim against Mr. Hannon as an "Enron Defendant[] that sold Enron stock during the Class Period."[16] Plaintiffs attempt to do so with no demonstrable evidence of any sales of stock

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[15]See Baker Hughes, 136 F. Supp.2d at 646 (finding no strong inference of scienter where plaintiff failed to plead defendants' trading history and percentage of stock sold because absent particularized claim, one could infer that class period sales were consistent with prior sales); see also BMC Software, 183 F. Supp.2d at 901 (finding that defendant's trading history was "too limited to give rise to an inference of intend to defraud").

[16]It is not entirely clear whether plaintiffs assert this cause of action against Mr. Hannon. Although the Complaint states generally that the cause of action is against all "Enron Defendants that sold Enron Stock," (Compl. ¶ 999), it also states more specifically that it is against the "defendants detailed in Ex. A of the Exhibit Appendix." (Compl. ¶ 1000). While the Complaint alleges that Mr. Hannon sold stock (albeit at unspecified times and in unspecified quantities) during the three year class period, he is *not* identified as a contemporaneous trader in Exhibit A. This lack of specificity alone warrants a dismissal of the claim against him.

by Mr. Hannon, or any specific allegations as to any material, publicly undisclosed information known to Mr. Hannon at the time of the alleged unknown stock sales. Plaintiffs' wholly unsupported and conclusory allegations of insider trading are insufficient to state a claim against Mr. Hannon and should be dismissed.

As this Court stated recently in BMC Software, to state a claim for securities fraud based on insider trading under Sections 10(b) and 20A of the 1934 Act, a plaintiff must show that a defendant "(1) used material, nonpublic information, (2) knew or recklessly disregarded that the information was material and nonpublic, and (3) traded contemporaneously with the defendant."[17] 183 F. Supp.2d at 916. Plaintiffs must also satisfy the strict pleading requirements under Rule 9(b) and the PSLRA:

> The Complaint "must specify the times, dates, places . . . and other details of the alleged fraudulent activity. Amorphous allegations that the individuals sold stock on unspecified inside information, and on unspecified dates, which may or may not have been contemporaneous with plaintiffs' trades, do not state a claim under Section 20A."

In re AST Research Sec. Litig., 887 F. Supp. 231, 235 (C.D. Cal. 1995) (quoting Neubronner v. Milken, 6 F.3d 666, 672 (9th Cir. 1993)) (citations omitted); see also BMC Software, 183 F. Supp.2d at 916 (agreeing that the heightened pleading requirements of the PSLRA require plaintiffs to specify what nonpublic information was used by defendants to trade and how defendants knew such information was material and nonpublic). Here, like in BMC Software,

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[17]Because liability under Section 20A is derivative, for plaintiffs to state a claim, they must plead a predicate violation under the 1934 Act. See Advanta, 180 F.3d at 541 (dismissing Section 20A claim because plaintiffs failed to plead a predicate violation of Section 10(b) or Rule 10b-5); In re VeriFone Sec. Litig., 11 F.3d 865, 872 (9th Cir. 1993) (same). Because plaintiffs have not pled a violation of Section 10(b) or Rule 10b-5 against Mr. Hannon, their claim under Rule 20A similarly fails.

plaintiffs fail to allege sufficient facts against Mr. Hannon to support a 20A claim.

First, the Complaint fails to set forth any facts which would support a finding that Mr. Hannon used material nonpublic information to trade. Instead, plaintiffs summarily state that Mr. Hannon sold stock while in possession of some unspecified adverse undisclosed information, (Compl. ¶ 83(t)), and impermissibly rely upon group pleading to argue that by virtue of their positions, all of the defendants were "in possession of material, non-public information about Enron at the time of their collective stock sales." (Compl. ¶ 1001). Notwithstanding that the plaintiffs are required to prove *use* of the material nonpublic information by Mr. Hannon, rather than mere *possession*,[18] these allegations (and the Complaint as a whole) do not meet Rule 9(b)'s requirement of pleading fraud with particularity against Mr. Hannon. The Complaint does not specify what nonpublic information Mr. Hannon possessed at the time of his alleged stock sales, when Mr. Hannon obtained this information, how Mr. Hannon obtained the information, from whom Mr. Hannon obtained the information, or how Mr. Hannon used it for his own advantage. Similar to the complaint in Neubronner v. Miliken, plaintiffs' Complaint here "offers no specific facts demonstrating wrongdoing which [Mr. Hannon] could deny or otherwise controvert." 6 F.3d 666, 672 (9th Cir. 1993). As such, plaintiffs have failed to plead insider trading against Mr. Hannon with sufficient particularity under Rule 9(b), and the claim against him must be dismissed. See id. (affirming dismissal of insider trading claim where plaintiff did not allege specifically what information defendant obtained, when and from whom he obtained it,

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[18]See BMC Software, 183 F. Supp.2d at 916 ("To state a claim for securities fraud based on insider trading . . . a plaintiff must show that defendant . . . used material, nonpublic information . . . ."); cf. SEC v. Adler, 137 F.3d 1325, 1337 (11th Cir. 1998) (adopting "use test" and finding that "proof that an insider traded while in possession of material nonpublic information . . . is not a per se violation"); U.S. v. Smith, 155 F.3d 1051, 1069 (9th Cir. 1998) (same).

and how he used it for his own advantage); BMC Software, 183 F. Supp.2d at 871, 916 (finding plaintiffs failed to allege sufficient facts against Individual Defendants to state a cause of action for insider trading under Section 20A).[19]

Second, plaintiffs have failed to allege facts creating a strong inference that Mr. Hannon knew or recklessly disregarded that the alleged information was material and nonpublic. See BMC Software, 183 F. Supp. 2d at 916 (finding plaintiffs failed to state a 20A claim where there were no specific allegations as to how defendants knew the information was material or nonpublic). For the reasons set forth supra, at I.C., plaintiffs' alleged averments regarding scienter as to Mr. Hannon are insufficient as a matter of law.[20]

Third, the Complaint does not allege with specificity the details of Mr. Hannon's alleged stock transactions or that plaintiffs traded contemporaneously with Mr. Hannon. In fact, Mr. Hannon is not even mentioned in Exhibit A of the Exhibit Appendix which purports to

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[19] See also AST Research, 887 F. Supp. at 235 (dismissing Section 20A claims where plaintiffs failed to specify what material nonpublic inside information defendants supposedly knew); Colby v. Hologic, Inc., 817 F. Supp. 204, 215 (D. Mass. 1993) (finding no liability for insider trading where plaintiff "has not sufficiently alleged what 'materially adverse information' any defendant possessed during the 'class period' and hence there can be no duty to avoid trading or to make disclosure to equalize knowledge of insiders and the investing public."); Oak Tech., 1997 WL 448168, at *12 ("Plaintiffs fail to specify what material information these Defendants possessed. Plaintiffs' general allegation that, 'because of [their] . . . position[s] with Oak,' each of the outside director and vice president Defendants 'knew the adverse non-public information about Oak's business, finances, products, markets and present and future business prospects,' . . . does not satisfy the strict pleading requirements of Rule 9(b) and the Reform Act.").

[20]To the extent plaintiffs attempt to support their insider trading claim against Mr. Hannon based on the Declaration of Scott D. Hakala, the Declaration should be disregarded because it does not even mention Mr. Hannon. Moreover, putting aside the absurdity of concluding anything about the propriety of unknown trades, Mr. Hannon incorporates by reference the arguments set forth in Section II.C.2 of the Joint Brief of Officer Defendants as to why the Declaration should not be considered.

identify the defendants' contemporaneous trades. Moreover, the Complaint contains no allegations as to the circumstances of Mr. Hannon's alleged trades, other than to aver that they are "unknown but substantial." (See Compl. ¶¶ 84, 401). The utter absence of facts setting forth the dates and amounts of the alleged stock sales necessarily precludes a finding that the plaintiffs traded in stock contemporaneously with Mr. Hannon and mandates that the insider trading claims against him be dismissed.[21] See Neubronner, 6 F.3d at 670-71 (finding that "[i]n light of the obvious need to protect parties from having to defend suits against plaintiffs whom may be merely guessing that contemporaneous trading occurred," general allegations of contemporaneous trading are insufficient; "Neubronner has not alleged any facts that necessarily suggest Milken ever traded at any time in GFC common stock much less that raise an inference that Milken traded contemporaneously with Neubronner"); BMC Software, 183 F. Supp.2d at 916 ("There are no specific allegations of contemporaneous trading of Plaintiffs/investors and Defendants . . . ."); Copland v. Grumet, 88 F. Supp.2d 326, 338 (D.N.J. 1999) (dismissing

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[21]Plaintiffs' 20A claim fails for the additional reason that absent a specific allegation of contemporaneous trading, plaintiffs do not have standing to bring the claim against Mr. Hannon. To have statutory standing under Section 20A, a plaintiff must show that he or she purchased or sold securities "contemporaneously" with the insider. See 15 U.S.C. § 78t-1(a). Where, as is here, a plaintiff is unable to show a contemporaneous purchase, the plaintiff does not have standing to assert an insider trading claim under Section 20A, and the claim must be dismissed. Colby, 817 F. Supp. at 215-16 (dismissing insider trading claim where trade was not contemporaneous because plaintiff "lacks standing herself to bring this claim and is not a suitable representative of others who might perhaps press it"); In re VeriFone Sec. Litig., 784 F. Supp. 1471, 1488-90 (N.D. Cal. 1992) (finding that plaintiffs who did not trade contemporaneously with defendants could not maintain Section 20A claim; "Where a plaintiff lacks standing to bring a claim personally, that plaintiff cannot represent the class"), aff'd, 11 F.3d 865 (9th Cir. 1993); see also In re Browning-Ferris Indus. Inc. Sec. Litig., 876 F. Supp. 870, 909 (S.D. Tex. 1995) (addressing summary judgment motion and stating that "[a] representative bringing suit on behalf of a class of purchasers must have traded contemporaneously. If a named plaintiff has not traded contemporaneously with the insider, he or she lacks standing to bring a private insider trading claim, and therefore is an inadequate class representative.") (citation omitted).

Section 20A claim where "there are no factual allegations that demonstrate that any of the named plaintiffs" traded on the same date as the defendant); In re Cypress Semiconductor Sec. Litig., 864 F. Supp. 957, 960 (N.D. Cal. 1994) (dismissing Section 20A claim because plaintiff could not allege a purchase of stock contemporaneous with a sale by a defendant).

For the reasons set forth above, any attempt by plaintiffs to drag Mr. Hannon into the insider trading imbroglio is wholly without factual support, and the insider trading claim against him should be dismissed.

III. PLAINTIFFS FAIL TO STATE A CLAIM AGAINST HANNON FOR CONTROL PERSON LIABILITY UNDER SECTION 20(a)

Plaintiffs' purported claim against Mr. Hannon for control person liability similarly fails because plaintiffs have not alleged (and cannot allege) that Mr. Hannon controlled any of the persons named as defendants in the Complaint. In paragraphs 993 through 997 of the Complaint, plaintiffs purport to set forth claims for control person liability against twenty-nine of Enron's "top executives and directors" (of which Mr. Hannon is summarily included), the accountants, lawyers and investment banks. Nowhere, however, do plaintiffs identify who Mr. Hannon allegedly controlled, nor do they set forth any allegations of Mr. Hannon's purported power to control.

To state a claim under Section 20(a), plaintiffs must allege a primary violation of the 1934 Act, and that the defendant possessed the power to control the primary violator.[22] See 15 U.S.C. § 78 t(a); see also BMC Software, 183 F. Supp. 2d at 869 n.17. Plaintiffs are required

[22]Control person liability is "predicated upon the theory that *certain* corporate insiders have the power and obligation to supervise or 'control' the day-to-day 'policy and decision-making processes' of the persons *beneath them* who are alleged to have committed the primary wrongs." Copland v. Grumet, 1998 WL 256654, at *14 (D.N.J. Jan. 9, 1998) (emphasis added).

to plead the circumstances of the control relationship with sufficient particularity to satisfy Rule 9(b). See Howard v. Hui, 2001 WL 1159780, at *4 (N.D. Cal. Sept. 24, 2001); In re Slash Tech. Holdings, Inc. Sec. Litig., 2000 WL 1727405, at *15 (N.D. Cal. Sept. 29, 2000); see also Martin v. EVP Second Corp., 1991 WL 131176, at *3 (S.D.N.Y. Jul. 9, 1991) (rejecting "for failure to plead particularized facts" plaintiffs' conclusory allegations that individual defendants are controlling persons).

Here, there are *no allegations* in the Complaint that Mr. Hannon possessed the power to control any person alleged to be a primary "violator." In the absence of any specific allegations, plaintiffs seemingly ask this Court to find that any and all officers are control persons under Section 20(a), and make an absurd inference that Mr. Hannon in his positions as "Operating Officer of EBS," and "President of the trading and commodities business" controlled the CEO, CFO, and COO of Enron, the directors of Enron, and a myriad of other defendants, all of whom did not directly report to Mr. Hannon. (See Compl. ¶ 83(t)). The law, however, prohibits such an unreasonable inference. See Dartley v. ErgoBilt, Inc., 2001 WL 313964, at *1 (N.D. Tex. Mar. 29, 2001) (dismissing Section 20(a) claim because status as a "major shareholder" and participation in voting agreement "does not, without more, create control person liability"); Rich v. Maidstone Fin., Inc., 2001 WL 286757, *9 (S.D.N.Y., Mar. 23, 2001) ("[P]leading officer or director status alone is not enough [to plead a Section 20(a) claim]"); Copland v. Grumet, 1998 WL 256654, at *15 (D.N.J. Jan. 9, 1998) (dismissing Section 20(a) claim stating "[a]t a minimum, the allegations concerning the controlling person's relationship with the primary violator must support a reasonable inference that the control person 'had the

power to influence and . . . direct the activities' of the primary violator.'").[23]

Because plaintiffs do not allege that Mr. Hannon had control of any perpetrator, other than allegations of position which, of themselves, are inadequate, plaintiffs' attempt to state a Section 20(a) claim against Mr. Hannon fails.

CONCLUSION

As set forth above, no securities fraud has been alleged against Mr. Hannon. Despite nearly six months or research and investigation, plaintiffs have not, and cannot, specify what they think he did wrong. Because plaintiffs have failed to plead the elements of securities fraud under the 1934 Act, Rule 9(b) and the PSLRA, Mr. Hannon respectfully requests that the

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[23] See also Wenneman v. Brown, 49 F. Supp.2d 1283, 1290 (D. Utah 1999) (stating that dismissal of Section 20(a) claim is appropriate where "a plaintiff does not plead any facts from which it can reasonably be inferred that the defendant was a control person"); Komanoff v. Mabon, Nugent & Co., 884 F. Supp. 848, 859 (S.D.N.Y. 1995) (dismissing Section 20(a) claim where complaint fails to make clear "who the primary violators were that defendants are alleged to have controlled"); In re Cryomedical Sci., Inc. Sec. Litig., 884 F. Supp. 1001, 1020 (D. Md. 1995) ("[N]either status nor position, in and of themselves, are sufficient for § 20(a) liability.").

claims against him be dismissed with prejudice.

Dated: May 8, 2002

Respectfully submitted,

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I certify that a true and correct copy of the foregoing document was forwarded to all counsel listed on the attached Exhibit A Service List by e-mail or facsimile on this 8th day of May, 2002.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated,	§	
Plaintiffs	§	
vs.	§	CIVIL ACTION NO. H-01-3624
	§	(Consolidated)
ENRON CORP., et al.,	§	
Defendants	§	

ORDER

Having considered the motion to dismiss filed by Defendant Kevin P. Hannon and all materials filed in support of and in opposition to this motion, and finding that the Complaint fails to state a claim against this Defendant upon which relief can be granted,

It is hereby ORDERED that:

1. Defendant's motion is GRANTED, and

2. The claims against Defendant Kevin P. Hannon are DISMISSED with prejudice.

SIGNED this _____ day of _____, 2002.

_____
Melinda Harmon
United States District Judge